IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

WEALTH TAX REFERENCE No 7 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

and

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? :

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HARSHADKUMAR S MEHTA

Versus

COMMISSIONER OF WEALTH TAX

Appearance:

1. WEALTH TAX REFERENCE No. 7 of 1988

Mr. B.D. Karia for Petitioner.

MR BB NAIK for Respondent.

CORAM : MR.JUSTICE M.S.SHAH

and

MR.JUSTICE K.A.PUJ

Date of decision: 04/07/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE K.A.PUJ)

The assessee-applicant has moved an application under Section 27(2) of the Wealth Tax Act, 1957 requesting this Court to permit the Income Tax Appellate Tribunal to refer the questions of law mentioned therein. This Court accordingly passed an order on Statement of Case and in pursuance of the said directions following questions of law were referred for the opinion of this Court :

1. "Whether on the facts and in the circumstances the Tribunal was right in law in holding that the valuation of Rs. 10,37,153/- adopted by the AAC for A.Y. 1973-74 disregarding the valuation of the Registered Valuer as well as the valuation Officer was correct ?

2. Whether on the facts and in the circumstances of the case, the Tribunal was right in law in considering the D.V.O's report for upholding the AAC's order even when the AAC had mainly adopted the report of the registered valuer and thus whether the Tribunal's order cannot be said to be vitiated it having based its decision on partly relevant and partly irrelevant material ?

3. Whether on the facts and in the circumstances of the case, the Tribunal was justified in law in upholding the valuation adopted by the AAC when the AAC and the Tribunal both have failed to take into consideration the DVO's report in relation to the same property in the hands of the vendor and the true import of the said valuation report and whether it cannot be said that the decision of the Tribunal was vitiated in law and was one at which no reasonable person would arrive at ?

4. Whether on the facts and in the circumstances of the case, the finding of the Tribunal upholding the valuation adopted by the AAC is based on any relevant evidence and material on record and/or can be said to be one which has been arrived at after considering all the relevant evidence and whether the same is not unreasonable and perverse?"

2. Heard Mr. B.D. Karia, ld. advocate appearing for the applicant and Mr. B.B. Naik, learned Senior Standing Counsel appearing for the Revenue. At the outset, it is to be noted that though the Tribunal's order is in respect of 7 years, that is for assessment

years 1973-74 to 1979-80, the questions referred to this Court are in respect of only one assessment year 1973-74. It appears to us that either there might be some typographical error or omission due to which Reference for other assessment years was not made, or the assessee has preferred Reference for only one assessment year, that is 1973-74. Be that as it may, we are concerned with the assessment year 1973-74 only in the present Reference before us.

3. It is also pointed out to us that there are five cosharers of the property involved in this Reference. However, the Reference is made only with regard to one of the cosharers, that is the applicant before us.

4. The only dispute involved in the present Reference is in respect of valuation of house property known as "Morvi House" which comprises of permanent leasehold land admeasuring about 16,505 sq.yds and 5 sq.ft. The superstructure on it consists of (1) double storeyed main bunglow (2) double storeyed guest house (3) quarters for staff and servants and (4) Garages and sanitary block.

5. For the A.Ys. 1973-74, 1974-75 and 1975-76 the assessee relied upon the valuation report of M/s. M.P. Rathod & Co., dated February 9, 1976 according to which Morvi House had been valued at Rs. 5,16,500/- as on April 4, 1972. The WTO referred the question of valuation to the official valuer who, by his report dated September 20, 1977, valued the said property at Rs. 12,03,070/- as on 4-4-1972 and at Rs. 14,85,710/- as on March 31, 1975. The WTO completed the assessment by adopting the valuation of the District Valuation Officer (DVO). In appeal the AAC after critically examining the reports of the two valuers and mainly adopting the report of the assessee's valuer adopted the valuation of Rs. 10,37,153/= for all the three years i.e. A.Y. 1973-74, 74-75 and 1975-76.

6. For A.Ys. 1976-77, 77-78, 78-79 and 79-80 the WTO valued the property at Rs. 8,09,315/-, Rs. 8,07,500/-, Rs. 5,94,500/-, and Rs. 8,56,728/- respectively. Taking into consideration the effect of the Urban Land Ceiling Act and finding that the valuation adopted by the WTO were less than those of the earlier years the AAC confirmed the same and dismissed the assessee's appeals.

7. Being aggrieved by the order of the CIT(A), the assessee has taken the matter in second appeal before the

Tribunal and after hearing the parties at length and on going through the material filed before the Tribunal, a view was taken by the Tribunal that in the preparation of its reports the District Valuation Officer had taken all objections raised by the assessee into consideration. It was further observed by the Tribunal that the District Valuation Officer had adopted the land and building method of valuation for valuing the self occupied property in the building and rent capitalisation method for the valuation of the rented portion. The Tribunal further observed that in the computation of gross annual rental income deductions on account of collection, management charges, bad debts, vacancies, maintenance and repairs were given and the net income was capitalised with 5% return in perpetuity of the tenanted portion and the DVO had also noted land married with rented building which was 1112 sq.yds. The Tribunal has further observed that the first appellate authority has allowed 10% discount in the valuation on account of joint ownership and had also kept in mind the effect of Urban Land Ceiling Act and Rent Control Laws. After discussing all these aspects of the matter and all the relevant points touching the subject matter of the appeal, the Tribunal has confirmed the order passed by the first appellate authority.

8. Mr. B.D. Karia, ld. advocate appearing for the applicant has vehemently argued before us that the Tribunal has committed an error in confirming the order of the first appellate authority as the adoption of the valuation of Rs. 10,37,153/= adopted by the first appellate authority for assessment year 1973-74 is in complete disregard of the valuation adopted by the registered valuer as well as the District Valuation Officer. Mr. Karia has further argued that when both the reports were available with the first appellate authority he has no business to adopt his own value disregarding the Expert's opinion on the valuation of the properties. It was further submitted that the first appellate authority has adopted the valuation ignoring the report of the DVO in relation to the same property in the hands of the vendor and the report of the said Valuation Officer.

9. Lastly, he has submitted that the Tribunal has materially erred in confirming the order of the first appellate authority who has adopted the value of the property in question ignoring the relevant materials and without properly appreciating the evidence placed before him. He therefore urged that the order of the Tribunal may be reversed and the questions raised in the present

Reference may be answered by this Court in favour of the assessee and against the Revenue.

10. Mr. B.B. Naik, learned Sr. Standing Counsel appearing for the Revenue has, on the other hand, supported the orders passed by both the authorities below and further submitted that it is not obligatory on the part of the appellate authority to accept in toto the valuation report submitted either by the assessee or by the department. It is still open for the appellate authority to consider the said report on the basis of the relevant principles of valuation and to come to right conclusion. Since this was done by the Appellate Assistant Commissioner and which was rightly confirmed by the Tribunal, no interference is called for in the order of the Tribunal.

11. We have considered the arguments of both the sides and we have also gone through the record. We are of the view that the Tribunal has come to the right conclusion in upholding the order of the Appellate Assistant Commissioner. The questions referred to us are only the different facets of the issue. Further, ultimately the finding given by the authorities are based on facts and the facts were correctly appreciated by the authorities below. We, therefore, answer all these four questions in affirmative, that is in favour of Revenue and against the assessee. The Reference is, accordingly disposed of with no order as to costs.

[M.S. Shah, J.]

rmr. [K.A. Puj, J.]